IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.453 OF 2005

Ashok Ambadas Gangane .. ..Appellant
Versus
M/s.Subhamangal Builders and Ors. ..Respondents

Mr.Vishwajit P.Sawant for appellant
Mr.R.V.More for respondent no.1
Mr.R.G.Ketkar for Respondent No.2

WITH

SECOND APPEAL NO.454 OF 2005

Ashok Ambadas Gangane .. ..Appellant
Versus
Pune Municipal Corporation & Ors... ..Respondents

Mr.Vishwajit P.Sawant for appellant
Mr.R.G.Ketkar for respondent nos.1 and 2
Mr.R.V.More for respondent no.3.

CORAM : P.V.KAKADE, J.

DATE : 18th OCTOBER, 2005

P.C.:

1. Both these appeals are preferred by the appellants against the judgment and order passed by Addl.District Judge, Pune allowing the appeals and setting aside the Judgment and Order passed by Civil

Judge, Junior Division, PMC Court, Pune decreeing the plaintiff's suit for declaration and perpetual injunction against the landlord as well as Municipal Corporation.

2. I have heard the learned Counsel for all the concerned parties. Perused the record including the compilation submitted by the appellant for my perusal.

3. The plaintiff filed the suit for declaration that Notice bearing No.L/2062 dated 16.12.1998 issued by defendant-Corporation be declared as illegal and void and also asked for declaration that affidavit dated 3.10.1998 produced by the plaintiff to defendant Corporation is obtained by defendant no.2 under coercion and by practising undue influence, and for perpetual injunction to restrain defendant Corporation from removing two hoardings admeasuring 15' x 22' erected on the property bearing House No.380 i.e. Old City Survey No.917/C situated at Narayan Peth, Pune.

. The defendants contested the suit, inter alia, denying the allegations made by the plaintiff and submitting that the Notice under Section 245 of The

Bombay Provincial Municipal Corporation Act, 1949, (hereinafter referred to as the said Act) is legal and proper and therefore, the suit is not maintainable to declare the notice is void. The landlord of the property also joined as party to the suit, who also challenged the plaintiff's suit on various grounds, inter alia, submitting that the action taken by the Corporation was legal and proper and therefore sought dismissal of the suit.

4. The learned trial judge adjudicated the dispute on merits and on the basis of available evidence it was held that the plaintiff had proved that he was entitled to do any business at the suit premises and that the defendant corporation was not legally empowered to refuse to renew licence to display hoardings. It was further held that the plaintiff had proved that the act of defendant Corporation in refusal of renewal was illegal and it was further held that the plaintiff had proved that his affidavit dated 3.10.1998 was obtained by the defendant no.2 under coercion. The learned trial judge also concluded that the defendant nos.1 and 2 failed to prove that their action of withdrawing permission to erect hoarding was legal and justifiable

and as such the notice under Section 245 of the said Act issued by the Defendant Corporation was held illegal and suit came to be decreed.

. The appeal was carried to the District Court, Pune. The learned Addl. District Judge after hearing both the parties came to the conclusion that the impugned Notice dated 16.12.1998 calling upon the plaintiff to remove the disputed hoardings was legal and proper and therefore, the respondent-plaintiff was not entitled to the reliefs as prayed for and dismissed the suit by allowing the appeals. Hence the present appeals.

5. At the outset, it may be noted that the learned counsel for the appellant sought to raise issues regarding findings recorded by the lower appellate court to the effect that whether the judgment of the lower appellate court stands vitiated for not recording a finding and whether the reason mentioned in the notice dated 16.12.1998 issued to the appellant was valid and legal. It was further submitted that the notice issued by the Corporation cancelling the permission granted to the Appellant was bad in law and was issued without

observing the principles of natural justice. In fact the learned counsel for the appellant sought to raise various other issues. However, it must be noted that those other issues are merely issues of facts and therefore, cannot be considered at the stage of admission of the second appeal.

. The compilation provided for my perusal also contains the relevant documents including the permission or permit issued by the Corporation in favour of the present appellant in order to display the hoarding, it shows that it was granted for the period from 1.10.1998 till 31.3.1999 and stipulated that the appellant was entitled to display the hoardings of the size of 15’ x 8’ and those hoardings were in the category of non-illuminated There were also other certain conditions for the said permission. Vide clause 4 of the permission mentioned that the permission would be cancelled, if there are any changes made without prior permission of the Corporation. The impugned notice under Section 245 dated 16.12.1998, which is the bone of conditions amongst the parties is also part of the compilation, which contains that the permission which was granted earlier was cancelled for the reason that

the landlord had not given consent to raise the said hoardings and therefore, had taken objection for such permission given by the Corporation. It was also mentioned that before obtaining permission the appellant had made an affidavit dated 3.10.1998 wherein it was stated in clear terms that the appellant would remove the hoardings at his own cost, if the landlord raised any objection. Therefore, now since the landlord had raised objection, and substance was found in such objection, the Corporation sought to withdraw the permission and hence called upon the appellant to remove the hoardings within seven days from the date of the receipt of the notice along with iron structures on which the hoardings were standing.

6. The main contention sought to be raised on behalf of the appellant is that the permission was given subject to certain conditions, which are embodied in the permission itself and it does not contemplate withdrawal of the permission on landlord’s objection and therefore, the ground given by the Corporation was illegal, and therefore, withdrawal of permission on that count was not legal. It was also contended that the affidavit obtained by the Corporation before giving permission was

obtained under coercion and therefore, it is not binding upon the appellant. In this regard it must be noted at this juncture itself that the issue regarding alleged coercion is purely issue of fact and therefore, the findings recorded by the first appellate court, which is last court of fact, has to be accepted by this Court and this Court cannot go into the merits of that issue when the lower appellate court has recorded finding that the said affidavit is given voluntarily and without any coercion. Once this finding of fact has become final, then the objection in that regard for embodiment of the contents regarding objection of the landlord in the Notice under Section 245 of the said Act stands valid and in my considered view, the act of the Corporation in taking action under Section 245 of the said Act has to be accepted as legal. If we perused minutely the provision of section 245 of the said Act whereunder the Corporation is given ample authority to take such action. The scheme of the provision of Section 245 of the said Act shows that the permission under the said Section would be from the date of each such permission or renewal subject to the condition that such permission shall be deemed to be void if -

(a) any addition is made to the sky-sign except for the purpose of making it secure under the direction of the City engineer,

Therefore, the action based upon the provision of Section 244 which culminated in notice under Section 245 of the said Act cannot be held to be illegal when it is not established that the affidavit of the plaintiff-appellant was not in coercion but was given voluntarily.

7. Again there is a different angle to the present dispute. The permission is granted for 15 x 8 sq. ft. hoardings or sky-sign, however, admittedly as well as evidently the hoardings on the spot are of 15 x 22 sq. ft. and which can be seen from para 1 of the Plaint itself as well as other evidence on record, which again is violative of the permission and therefore, the Corporation's act becomes valid by virtue of provision of Section 244(1)(a) of the said Act.

8. It was further submitted that in issuance of notice the Corporation has infringed the principles of natural justice in the sense that the appellant was not given opportunity to be heard on the issue. However, in

this regard it must be noted that the provision of Section 244 does not contemplate personal hearing at all. Moreover, sufficient time was given to the appellant to remove the hoardings as agreed upon it by the appellant in his affidavit furnished to the Corporation, and therefore, in my considered view, the appellant cannot go back on his words contained in his affidavit and therefore, the action taken by the Corporation on the basis of objection, which are found to be valid, taken by the landlord.

9. In the result, I hold that the findings recorded by the learned lower appellate court judge are just, legal and proper and therefore, it would brook no interference. In the result the appeals have no merits and stand dismissed with no order as to costs. Consequently civil applications also stands dismissed with no order as to costs.

10. At this stage the learned counsel for the appellant prayed for Stay of the order. In view of the facts and circumstances therefore, interim relief which was granted pending the appeal shall stands continued for a period of six weeks from the date of this order.